

Notice of Decision and Reasons for Decision

Applicant:	'BY4'
Agency:	St Vincent's Health
Decision date:	20 August 2020
Exemptions and provisions considered:	Sections 30(1), 35(1)(b) and 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 144R of the <i>Family Violence Protection Act 2008</i> (Vic) and sections 41(1) and 191(1) of the <i>Children Youth and Families Act 2005</i> (Vic)
Citation:	'BY4' and St Vincent's Health (<i>Freedom of Information</i>) [2020] VICmr 233 (20 August 2020)

FREEDOM OF INFORMATION – medical records – mental health records – personal records – information obtained in confidence – disclosure contrary to the public interest – deliberative process – family violence – information sharing scheme – prohibited disclosure of protected information – secrecy provision

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

I have determined the majority of the information in the documents is exempt in full.

I am satisfied the information is exempt under sections 30(1), 35(1)(b) and section 38 of the FOI Act in conjunction with section 144C(f) of the *Family Violence Protection Act 2008* (Vic) (**FVP Act**) and sections 41(1) and 191(1) of the *Children Youth and Families Act 2005* (Vic) (**CYF Act**).

Where I am satisfied it is practicable to delete irrelevant or exempt information in a document in accordance with section 25, I have determined to grant access to that document in part.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

Joanne Kummrow

Public Access Deputy Commissioner

20 August 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:

... copies of full medical records – inpatient, community, ED, mental health (etc), everything on record.
2. In its decision, the Agency identified 18 pages of documents falling within the terms of the Applicant's request. It granted access to certain documents in part, and refused access to other documents in full, relying the exemptions under sections 33(1) and 35(1)(b). The Agency's decision letter sets out the reasons for its decision.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined copies of the documents subject to review.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all communications received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) information provided with the Applicant's review application;
 - (c) the Agency's submissions dated [date] and [date]; and
 - (d) all other communications between the Applicant, the Agency and OVIC staff.
7. Section 49F provides I 'may review the decision that is the subject of the application for review', while section 49P provides I 'must make a fresh decision on the original application'. In undertaking a review under section 49F, I am required by section 49P to make a fresh or new decision. This means my review does not involve determining whether the Agency's original decision was correct, rather I am required to ensure my fresh decision is the 'correct or preferable decision'.¹ This involves ensuring my decision is correctly made under the FOI Act and any other relevant applicable law in force at the time of my decision.
8. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
9. I also note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

¹ *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591.

Review of exemptions

10. As detailed below, in addition to relying on sections 33(1) and 35(1)(b) to refuse access to the documents as per its decision letter, the Agency also seeks to rely on section 38 in relation to Document 7. OVIC staff advised the Applicant of this additional exemption under consideration.

Agency's submissions

11. The Agency submits:

Having regard to the Director's review, [the Agency] determined to exempt certain documents from disclosure pursuant to section 35(1)(b) of the FOI Act. This decision was made on the basis that certain documents contained information that had been communicated in confidence by third parties with the expectation that it would not be provided to the patient. It was, therefore, [the Agency's] view that it would be contrary to the public interest to disclose these documents as it would be reasonably likely impair its ability to obtain similar information in the future, which is contrary to the public interest. It was further determined to exempt certain documents from disclosure pursuant to section 33(1) of the FOI Act. This decision was made on the basis that the release of certain documents would involve the unreasonable disclosure of personal information of persons other than the applicant

....

It was determined to be impractical to undertake a consultation process in order to seek the views of the third parties who provided the information to [the Agency], in accordance with section 35(1B)(b).

12. The Agency further submits:

It was further determined to exempt 1 document [being Document 7] pursuant section 38 of the FOI Act being a document to which secrecy provisions in other legislation apply. This information was supplied pursuant to the *Family Violence Protection Act 2008* and the *Child Wellbeing and Safety Act 2005* and is also contains information relating to child protection notifications under the *Children Youth and Families Act 2005*.

13. The Applicant did not provide a submission in this matter.

Child Protection and Child Protection records

14. Firstly, I wish to discuss Child Protection and the general nature of Child Protection records in Victoria.
15. The Department of Health and Human Services (the **Department**) is responsible for enforcing and administering the CYF Act as it relates to child protection in Victoria.
16. Child Protection files come into existence when the Department is notified or otherwise becomes aware, a child or young person is at risk to harm, wellbeing or other safety concerns. The CYF Act provides for voluntary reports from a person and mandatory reporting by certain professionals specified under the CYF Act.
17. The main functions of Child Protection are to:
 - (a) investigate matters where it is alleged a child is at risk of harm;
 - (b) refer children and the family to services for the ongoing safety and wellbeing of children;
 - (c) escalate matters to the Children's Court if a child's safety cannot be ensured within the family; and
 - (d) supervise children on legal orders granted by the Children's Court.

18. The Department has published a 'Child Protection Manual', which is used by Child Protection practitioners and contains information for families. The manual is available at www.cpmanual.vic.gov.au.
19. Parliament has determined strict parameters apply to what information can be released in relation to Child Protection matters, including a prohibition on identifying a person who notified the Department about any child protection concerns (**notifiers**) and any subsequent investigations by the Department into or action taken to address any concerns.
20. By way of example, sections 41, 191 and 209 of the CYF Act prohibit the disclosure of the name of notifiers, as well as any information likely to lead to the identification of a notifier, except in certain limited circumstances where disclosure is authorised. This reflects the strong need for confidentiality around child protection notifications and any subsequent inquiries or investigations conducted by the Department, in order to assure notifiers of confidentiality when making sensitive notifications to the Department in the interests of protecting a child from harm or possible harm.
21. This means, when a person, who has been involved with Child Protection, or the parent or guardian of such a child, seeks access to information relating to Child Protection, the confidentiality provisions that apply to Child Protection records under the CYF Act are strictly applied.

Section 38 – Documents to which secrecy provisions apply

22. A document is exempt under section 38 if:
 - (a) there is an enactment in force;
 - (b) that applies specifically to the kind of information in the document; and
 - (c) the enactment must prohibit persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).
23. For section 38 to apply, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

Application of confidentiality provisions in the CYF Act

24. Section 41 of the CYF Act provides:

41 Identity of reporter or referrer confidential

- (1) If a report is made to the Secretary under section 28 or 29, a person (other than the person who made it) must not disclose to any person other than the Secretary or a community-based child and family service to which the matter is referred under section 30—
 - (a) the name of the person who made the report; and
 - (b) any information that is likely to lead to the identification of the person who made the report.

Penalty: 60 penalty units.

...
- (2) Subsection (1) does not apply if the person who made the report or referral—
 - (a) gives written consent to the Secretary; or
 - (b) gives written or oral consent to the community-based child and family service.

25. Section 191 of the CYF Act provides:

191 Confidentiality

- (1) If a report referred to in section 190(1) is made, a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a protective intervener or a community-based child and family service in accordance with subsection (4)—

- (a) the name of the person who made the report; or
- (b) any information that is likely to lead to the identification of the person who made the report.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply to a disclosure made to a court or tribunal in accordance with section 190.
- (3) Subsection (1) does not apply to a disclosure to the Therapeutic Treatment Board of the name or information leading to the identification of a police officer who made a report under section 185.

...

Penalty: 60 penalty units.

26. In summary, sections 41(1) and 191(1) and of the CYF Act prohibit disclosure of the names of persons, as well as any information likely to lead to the identification of any person who:

- (a) provides confidential child protection information to the Department in the course of a protective intervention investigation; or
- (b) notifies the Department of their concerns for the wellbeing of a child.

27. Unauthorised disclosure of such information is an offence and carries penalties under the CYF Act. The financial penalty associated with unauthorised disclosure of such information highlights the legislature's intention that such information should remain confidential.

28. I am satisfied the relevant sections of the CYF Act prohibit the disclosure of the identity, or any information likely to lead to the identification of a notifier/reporter or person who gave information in confidence to the Department. This includes not only the report or record of confidential information itself, but also any documents created containing details of the report or confidential information.

29. There is no information before me to suggest any of the exceptions under the CYF Act authorise disclosure of the documents to the Applicant in this instance.

Application of confidentiality provisions in the FVP Act

30. Section 144A of the FVP Act provides:

144A Definitions

...

confidential information means—

- (a) health information; or
- (b) personal information, including sensitive information; or

- (c) unique identifiers; or
- (d) identifiers;
- ...

31. Section 144C of the FVP Act provides:

144C Meaning of excluded information

In this Part, confidential information is **excluded information** if it is of a kind prescribed or the collection, use or disclosure of that information could be reasonably expected to—

- (a) endanger a person's life or result in physical injury; or
- (b) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance; or
- (c) prejudice a coronial inquest or inquiry; or
- (d) prejudice the fair trial of a person or the impartial adjudication of a particular case; or
- (e) disclose the contents of a document, or a communication, that is of such a nature that the contents of the document, or the communication, would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege; or
- (f) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; or
- (g) contravene a court order or a provision made by or under this Act or any other Act that—
 - (i) prohibits or restricts, or authorises a court or tribunal to prohibit or restrict, the publication or other disclosure of information for or in connection with any proceeding; or
 - (ii) requires or authorises a court or tribunal to close any proceeding to the public; or
- (h) be contrary to the public interest.

32. Section 144M of the FVP Act provides:

144M Voluntary disclosure to primary person

- (1) An information sharing entity may disclose confidential information about a person of concern to a primary person for a family violence protection purpose if the confidential information is not excluded information.

33. Section 144R of the FVP Act provides:

144R Unauthorised use and disclosure of confidential information

- (1) A person who uses or discloses confidential information in accordance with this Part must not use that information or disclose that information to another person except in accordance with this Part.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

- (2) It is a defence to a charge under subsection (1) for the person charged to prove that the use or disclosure of the confidential information was done in good faith and with reasonable care.
- (3) Subsection (1) does not apply to the following uses and disclosures of confidential information—
 - (a) a use or disclosure made with the consent of the person to whom the information relates;

- (b) a use or disclosure made with the consent of a person (other than a person of concern or a person alleged to pose a risk of family violence) who is a parent of the person who is a child to whom the information relates;
 - (c) a disclosure made to a court or tribunal in the course of legal proceedings;
 - (d) a use or disclosure made pursuant to an order of a court or tribunal;
 - (e) a use or disclosure made to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth;
 - (f) a disclosure made to an Australian legal practitioner for the purposes of obtaining legal advice or representation;
 - (g) a use or disclosure made as required or authorised by or under this Act or any other Act.
- (4) Subsection (1) does not apply to the use or disclosure of confidential information by a primary person who is given the confidential information under section 144M.
 - (5) A person does not commit an offence against this section only for the reason that the person uses or discloses confidential information in a way that does not comply with guidelines issued under section 144P(1).

Note

Despite non-compliance not being an offence—

- (a) this does not preclude non-compliance being taken into account in dealing with a complaint made under the **Privacy and Data Protection Act 2014**, the **Health Records Act 2001** or the Privacy Act 1988 of the Commonwealth; and
- (b) non-compliance may lead to a person or body ceasing to be prescribed as an information sharing entity.

- 34. In summary, sections 144R and 144C(f) of the FVP Act prohibit disclosure of exempt information which discloses, or enables a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law.
- 35. As noted above, unauthorised disclosure of such information is an offence and carries penalties under the FVP Act. The financial penalty associated with unauthorised disclosure highlights the legislature's intention that such information should remain protected.
- 36. I am satisfied the relevant sections of the FVP Act prohibit the disclosure of the identity, or any information likely to lead to the identification of a confidential source of information in relation to the enforcement or administration of the law.
- 37. There is no information before me to suggest any of the exceptions under the FVP Act authorise disclosure of the documents to the Applicant in this instance.
- 38. I note the Agency now seeks to rely on section 38 to exempt Document 7. However, having reviewed the content of all the documents subject to review, I am satisfied certain information in Document 7 as well as in other documents is exempt under section 38 of the FOI Act in conjunction with sections 41(1) and 191(1) of the CYF Act and section 144R of the FVP Act as I am satisfied:
 - (a) the CYF Act and FVP Act are enactments in force for the purposes of section 38;
 - (b) certain documents contain specific information prohibited from disclosure under sections 41(1) and 191(1) of the CYF Act and section 144R of the FVP Act;
 - (c) these provisions prohibit persons, in this case Agency officers, from disclosing the relevant information; and

(d) the prohibition is absolute, in that disclosure is not subject to any exceptions or qualifications.

39. In light of my decision in relation to the confidentiality provisions in section 144R of the FVP Act, it is not necessary for me to also consider the application of section 38 of the FOI Act and the confidentiality provisions under the *Child Wellbeing and Safety Act 2005 (Vic)*.

40. The Schedule of Documents at **Annexure 1** outlines my decision in relation to section 38.

Section 35(1)(b)

41. A document is exempt under section 35(1)(b) if two conditions are satisfied:

- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
- (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

42. In summary, section 35(1)(b) is concerned with protecting the public interest in the free flow of information provided in confidence between an individual and an agency.

Was the information or matter communicated in confidence?

43. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.² Further, confidentiality can be expressed or implied from the circumstances of the matter.³

44. The information exempted by the Agency under section 35(1)(b) includes information voluntarily provided to the Agency, by a person or persons, in the course of the Agency providing medical treatment to the Applicant. It also includes information provided by Agency officers.

45. Accordingly, I am satisfied the information was communicated to the Agency in confidence. This view considers the sensitive nature of the information and the circumstances surrounding and the purpose for which it was provided to the Agency.

Would disclosure be contrary to the public interest as it would be reasonably likely to impair the ability of the Agency to obtain similar information in the future?

46. The second condition requires I must be satisfied, if the information were to be disclosed, it would impair the ability of the Agency to obtain similar information in the future. For example, others in the position of the communicator or communicators would be reasonably likely to not provide similar information to the Agency in the future.

47. I accept information relating to medical treatment and healthcare received by a patient from the Agency, by its very nature, will generally be personal and sensitive. Further, I am satisfied there is an essential public interest in individuals being able to provide information of this nature to the Agency.

48. Where it is beneficial or necessary for information of this nature to be disclosed to the Agency, I am of the view individuals should feel confident the information they provide, including their identity or identifying information, will be held in confidence by the Agency.⁴

² *XYZ v Victoria Police (General)* [2010] VCAT 255 at [265].

³ *Ibid.*

⁴ See *Maki v Alfred Hospital*, unreported, VCAT, Davis M, 19 April 2002.

49. I am of the view if such individuals were aware their identity and the information they provide in confidence would be disclosed in response to an FOI request, they would be less likely to communicate similar information to the Agency in the future. I consider this would be a significant and detrimental outcome for the Agency, which relies on receiving such information to provide timely and necessary medical treatment and health services to patients.
50. In the context of the Agency, being a healthcare provider, the voluntary provision of personal and sensitive information in a clinical context is necessary for the Agency to be able to effectively discharge its medical and healthcare functions. Importantly, I also consider the withholding of such information from the Agency would have a detrimental impact on the medical outcomes and wellbeing of its patients.
51. While I acknowledge the Applicant has a genuine interest in obtaining full access to their medical records, in weighing these competing considerations, I consider the need to protect personal and sensitive information provided by a third party to the Agency in confidence for a clinical purpose and in the interests of its patients, outweighs the Applicant's personal interest in obtaining this information.
52. However, in relation to information provided by Agency officers and officers from other agencies, although I accept this information was communicated in confidence, I am of the view its disclosure would not be reasonably likely to inhibit the Agency's ability to obtain similar information in future. This view is based on medical practitioners and certain officers from other agencies being required to record their professional observations, opinions and advice as part of their professional and employment duties. Therefore, I am not satisfied this type of information is exempt under section 35(1)(b).
53. The Schedule of Documents at **Annexure 1** outlines my decision in relation to section 35(1)(b).

Section 30(1)

54. Section 30(1) has three requirements:
- (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
 - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
 - (c) disclosure of the matter would be contrary to the public interest.
55. The exemption does not apply to purely factual material in a document.⁵
56. The term 'officer of an Agency' is defined in section 5(1). It includes a member of an agency, a member of an agency's staff, and any person engaged by or on behalf of an agency, whether or not that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply.
57. The words 'opinion, advice or recommendation' convey a meaning of matters in the nature of a 'personal view', 'an opinion recommended or offered' or a 'presentation worthy of acceptance'.⁶
58. It is not necessary for information in a document to be in the nature of opinion, advice or recommendation. Rather, its release must disclose information of that nature.

⁵ Section 30(3).

⁶ *Halliday v Office of Fair Trading* (unreported, AAT of Vic, Coghlan PM, 20 July 1995).

59. Determining whether disclosure of a document would be contrary to the public interest involves a 'process of the weighing against each other conflicting merits and demerits' of disclosure.⁷

Do the documents disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister?

60. Having viewed the documents, I am satisfied certain information conveys the opinions and advice of Agency officers, and also consultation and deliberation that has taken place between Agency officers.
61. I note parts of the documents contain information that, when considered in isolation, could be considered factual or to have been provided in confidence by Agency officers. However, from my review of the documents, I accept this type of information is intertwined with opinions and advice expressed by Agency officers and consultation and deliberation that has taken place between Agency officers. Therefore, I am not satisfied this information is 'purely' factual such that it is not exempt under section 30(1) by virtue of section 30(3).
62. Accordingly, I am satisfied the first requirement of section 30(1) is met with respect to certain information in the documents.

Were the documents made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government?

63. The term 'deliberative process' has been interpreted widely. In *Re Waterford and Department of Treasury (No. 2)*,⁸ the Commonwealth Administrative Appeals Tribunal held:

... "deliberative processes" [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ... its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

64. I am satisfied the opinions and advice expressed by the Agency officers and the consultation and deliberation that has taken place between Agency officers was provided in the course of and for the purpose of the Agency's deliberative processes with respect to managing the health care of the Applicant.

Would disclosure of the documents be contrary to the public interest?

65. In determining if disclosure of the documents would be contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information.
66. I have given weight to the following relevant factors in the context of this matter:⁹
- (a) the right of every person to gain access to documents under the FOI Act;
 - (a) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
 - (b) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;

⁷ *Sinclair v Maryborough Mining Warden* [1975] HCA 17; [1975] 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

⁸ [1981] 1 AAR 1.

⁹ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (c) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
- (d) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the making of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
- (e) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
- (f) the public interest in the community being better informed about the way in which the agency carries out its functions, including its deliberative, consultative and decision making processes and whether the underlying issues require greater public scrutiny.

67. Having reviewed the documents, I am satisfied release of certain information would be contrary to the public interest for the following reasons:

- (a) Medical information is highly personal and sensitive nature. In this matter, certain information is sensitive in that it relates directly to the medical care and condition of the Applicant. The information also relates to broader issues, including the identification of risks in the effective treatment of the Applicant, rather than just a clinical assessment of the Applicant.
- (b) Agency officers need to be able to raise concerns regarding systemic issues involved in the coordination and management of vulnerable patients. Should this information be routinely released under the FOI Act, it is likely Agency staff will feel constrained in the way in which they are able to raise and communicate such concerns. This could have serious negative consequences in relation to the general coordination of care in situations where multiple healthcare providers are involved in a person's treatment.
- (c) While Agency officers are professionally required to provide their opinions and comments with respect to managing patient treatment and healthcare, I accept there is a public interest in them being able to record details of discussions with other Agency officers without concern such information will be disclosed to patients under the FOI Act. Therefore, I am satisfied the impact of routinely disclosing documents of this nature would undermine the robustness of the Agency's process in developing patient plans.
- (d) I am not satisfied disclosure of the information would result in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision making processes.

68. On balance, I am satisfied it would be contrary to the public interest to release certain information in the documents. Accordingly, I am satisfied this information is exempt under section 30(1).

69. The Schedule of Documents at **Annexure 1** outlines my decision in relation to section 30(1).

70. In light of my decision that certain information in the documents is exempt under section 30(1), it is not necessary for me to also consider the application of section 33(1) to the same documents.

Section 25 – Deletion of exempt or irrelevant information

71. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
72. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’¹⁰ and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not ‘practicable’, and release of an edited copy of the document is not required under section 25.¹¹
73. I have considered whether it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25. I am satisfied it is practicable to delete the exempt information, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

74. I have determined the majority of the information in the documents is exempt in full.
75. I am satisfied the information is exempt under sections 30(1), 35(1)(b) and section 38 of the FOI Act in conjunction with section 144C(f) of the FVP Act and sections 41(1) and 191(1) of the CYF Act.
76. Where I am satisfied it is practicable to delete irrelevant or exempt information in a document in accordance with section 25, I have determined to grant access to that document in part.
77. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

78. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.¹²
79. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹³
80. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁴
81. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
82. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.¹⁵

When this decision takes effect

83. My decision does not take effect until the Agency’s 14 day review period expires.

¹⁰ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

¹¹ *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

¹² The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹³ Section 52(5).

¹⁴ Section 52(9).

¹⁵ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1. (a)	[date]	MH telephone contact	1	Refused in full Sections 33(1), 35(1)(b)	Refused in full Sections 30(1), 35(1)(b)	<p>Section 30(1): The document contains information in the nature of consultation and deliberation between Agency officers produced in the course of, and for the purpose of, the Agency's deliberative process, in managing the health care of the Applicant. I am satisfied it would be contrary to the public interest to release this information for the reasons set out in my decision above. I am also satisfied any factual information is intertwined with deliberative information. Accordingly, I am satisfied the relevant information in the document is exempt under section 30(1).</p> <p>Section 35(1)(b): I am satisfied certain information was provided to the Agency in confidence and its disclosure would be contrary to the public interest as it is reasonably likely to impair the ability of the Agency to obtain similar information in future. I consider the stronger public interest lies in protecting personal and sensitive information provided by a person or persons to the Agency in confidence to assist in its assessment and treatment of patients. Accordingly, I am satisfied the relevant information is exempt under section 35(1)(b).</p> <p>Section 25: I am satisfied it is not</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						practicable to delete the exempt information in the document, in accordance with section 25.
1. (b)	[date]	MH Telephone Contact	1	Released in full	Not subject to review	
2.	[date]	Hospital Progress notes	3	Refused in full Sections 33(1), 35(1)(b)	Refused in full Sections 35(1)(b), 38	<p>Section 35(1)(b): See comments for Document 1.</p> <p>Section 38: I am satisfied certain information in the document is exempt under section 38 of the FOI Act in conjunction with sections 41(1) and 191(1) of the CYF Act and section 144R of the FVP Act for the reasons set out in my decision above.</p> <p>Section 25: See comments for Document 1.</p>
3.	[date]	Form	6	Refused in full Section 35(1)(b)	Refused in full Section 38	<p>Section 38: I am satisfied the information in the document is exempt under section 38 of the FOI Act in conjunction with section 144R of the FVP Act for the reasons set out in my decision above.</p> <p>Section 35(1)(b): I am not satisfied the information in the document is exempt under section 35(1)(b) for the reasons set out in my decision above.</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						Section 25: See comments for Document 1.
4.	[date]	Social Work note	2	Refused in full Section 35(1)(b)	Refused in full Sections 30(1), 38	Section 30(1): The document contains information in the nature of advice from an Agency officer and consultation between Agency officers. See comments for Document 1. Section 38: See comments for Document 2. Section 35(1)(b): See comments for Document 3. Section 25: See comments for Document 1.
5.	[date]	MH telephone contact	1	Refused in full Section 33(1)	Refused in full Section 30(1)	Section 30(1): The information in the document is intertwined with information in the nature of deliberation between Agency officers. See comments for Document 1. Section 25: See comments for Document 1.
6.	[date]	MH telephone contact	1	Refused in full Sections 33(1), 35(1)(b)	Refused in full Section 30(1)	Section 30(1): See comments for Document 5. Section 35(1)(b): See comments for Document 3. Section 25: See comments for Document 1.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
7.	[date]	Allied Health Note	1	Refused in full Sections 33(1), 38	Refused in full Section 30(1)	Section 30(1): See comments for Document 5. Section 25: See comments for Document 1.
8.	[date]	CMHPN Doctor note	2	Released in part Sections 33(1), 35(1)(b)	Release in part Sections 30(1), 38 The document is to be released with the following exempt information deleted in accordance with section 25: <u>Page 1:</u> <ul style="list-style-type: none"> Notes from the second phone call. <u>Page 2:</u> <ul style="list-style-type: none"> All information. 	Section 30(1): The document contains information in the nature of opinion from an Agency officer. I also consider certain information in the document is intertwined with information in the nature of deliberation between Agency officers. See comments for Document 1. Section 38: See comments for Document 2. Section 35(1)(b): See comments for Document 3. Section 25: I am satisfied it is practicable to delete the exempt information in the document, in accordance with section 25.